

§ 38B-3. Exceptions.

Notwithstanding G.S. 38B-2, a possessor of land may be subject to liability for physical injury or death to a trespasser in the following situations:

- (1) Intentional harms. – A possessor may be subject to liability if the trespasser's bodily injury or death resulted from the possessor's willful or wanton conduct, or was intentionally caused by the possessor, except that a possessor may use reasonable force to repel a trespasser who has entered the land or a building with the intent to commit a crime.
- (2) Harms to trespassing children caused by artificial condition. – A possessor may be subject to liability for bodily injury or death to a child trespasser resulting from an artificial condition on the land if all of the following apply:
 - a. The possessor knew or had reason to know that children were likely to trespass at the location of the condition.
 - b. The condition is one the possessor knew or reasonably should have known involved an unreasonable risk of serious bodily injury or death to such children.
 - c. The injured child did not discover the condition or realize the risk involved in the condition or in coming within the area made dangerous by it.
 - d. The utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved.
 - e. The possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.
- (3) Position of peril. – A possessor may be subject to liability for physical injury or death to a trespasser if the possessor discovered the trespasser in a position of peril or helplessness on the property and failed to exercise ordinary care not to injure the trespasser. (2011-283, s. 3.2; 2011-317, s. 1.1.)